

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LEE A. JENKINS,

Plaintiff,

vs.

CHRISTOPHER E. PECH, and  
PECH, HUGHES, & McDONALD,  
P.C., d/b/a Litow & Pech, P.C., a  
fictitious name,

Defendants.

8:14CV41

ORDER

This matter is before the court on the plaintiff's Motion for Class Certification and Stay of Briefing (Filing No. 15). The plaintiff requests the parties be allowed to delay complete briefing on the motion for class certification until discovery may be conducted. **See** Filing No. 15. Specifically, the plaintiff states the motion for class certification has been protectively filed early in this matter, shortly after the defendants filed an answer, to prevent the defendants from offering the named plaintiff full individual relief, thus rendering his claims moot. **See** Filing No. 16 - Brief p. 2-6. Nevertheless, the plaintiff also seeks to delay briefing the issue of class certification to allow the parties sufficient time to create a meaningful factual record through discovery. *Id.* at 6.

The defendants oppose the plaintiff's motion for class certification on the merits and oppose the briefing stay as untimely. **See** Filing No. 17 - Response. Specifically, the defendants note the plaintiff failed to file a brief and evidence in support of class certification on the merits. The plaintiff's brief merely argues for an extension of the briefing schedule. Moreover, the defendants argue they had already served an offer of judgment on the named plaintiff, at which time his claims became moot. The defendants state they intend to file a motion to dismiss the named plaintiff based on the offer of judgment. For these reasons, the defendants contend the plaintiff fails to show any justification for allowing delayed briefing since the reason for filing a protective motion for class certification is inapplicable to this plaintiff.

The plaintiff contends the defendants' offer of judgment was inadequate to pick off the plaintiff in this case. **See** Filing No. 18 - Reply. While the offer prompted the

plaintiff's filing the protective motion for class certification, the plaintiff argues any motion to dismiss based on the offer will be insufficient to dispose of the plaintiff or the case. Thus, the plaintiff persists in seeking time to conduct discovery prior to completing briefing on the merits for the motion for class certification.

The court finds good cause exists to extend time for the parties to complete briefing on the plaintiff's motion for class certification. The defendants state they intend to file a motion to dismiss the plaintiff, but the defendants have yet to file such motion. The defendants state a motion to dismiss may obviate the need for discovery and resolution of the class issues. The court has determined a stay of discovery is unnecessary at this time. **See** Filing No. 19 - 26(f) Report; Filing No. 20 - Progression Order. If the defendants elect to file a motion to dismiss, the court may reevaluate the parties' discovery needs. The court will have an opportunity to resolve the issues related the sufficiency of the defendants' offer of judgment at that time. Absent the defendants' moving to dismiss, the parties may complete discovery and fully brief the class certification issues. Accordingly,

**IT IS ORDERED:**

1. The plaintiff's Motion for Class Certification and Stay of Briefing (Filing No. 15) is granted in part. The portion of the plaintiff's motion seeking class certification is held in abeyance pending further order of the court. The portion of the plaintiff's motion seeking to stay briefing is granted. The court will set a briefing schedule after resolution of the defendants' motion to dismiss or during the parties' planning conference, whichever is later.

2. The defendants shall have to **on or before May 8, 2014**, to file a motion to dismiss.

Dated this 24th day of April, 2014.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge